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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ROBERT SATTERLEE, Plaintiff, vs. DAIMLERCHRYSLER MOTORS COMPANY, LLC, Defendant.	CASE NO. 08 CV 0666 J RBB **ANSWER OF DEFENDANT DAIMLERCHRYSLER MOTORS COMPANY LLC, CURRENTLY KNOWN AS CHRYSLER LLC, TO PLAINTIFF'S COMPLAINT; DEMAND FOR JURY TRIAL** [FRCP §38] Complaint Filed: April 11, 2008 Trial Date: Not set

Defendant DAIMLERCHRYSLER MOTORS COMPANY LLC, currently known as CHRYSLER LLC, answers plaintiff's unverified complaint as follows:

JURISDICTION

1. Defendant admits that Paragraph 1 of plaintiff's complaint alleges jurisdiction with this court. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation that plaintiff is a citizen of the State of California and on that basis denies that allegation. Defendant denies that DaimlerChrysler North America Holding Corporation is the "sole member" of DaimlerChrysler Motors Company, LLC. Defendant admits that the amount in controversy exceeds $75,000 and that it is a

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limited liability company. Defendant admits that this Court has jurisdiction pursuant to 28 U.S.C. section 1332.

PARTIES

2. Paragraph 2 of plaintiff's complaint does not contain factual averments and therefore no admission or denial is required.

3. Paragraph 3 of plaintiff's complaint does not contain factual averments and therefore no admission or denial is required.

FIRST CLAIM FOR RELIEF

FOR BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

CALIFORNIA CIVIL CODE SECTION 1794

4. Chrysler LLC admits that documents available for its review reflect that on April 21, 2007, plaintiff purchased the 2006 Jeep Commander, VIN 1J8HG48N86C244467, which was manufactured and distributed by answering defendant. Chrysler LLC lacks knowledge or information sufficient to form a belief as to the truth of the allegation that plaintiff purchased the vehicle for personal, family or household purposes, and on that basis denies those allegations. Defendant also lacks knowledge or information sufficient to form a belief as to the truth of the allegation that plaintiff purchased the vehicle from a person or entity engaged in the business of manufacturing, distributing, or selling consumer goods at retail and on that basis denies these allegations.

5. Defendant admits the allegation in paragraph 5 that plaintiff received a limited express warranty issued by Defendant and admits that the warranty covers the cost of parts and labor needed to repair the parts or components that are defective in material, workmanship or factory preparation, subject to certain exceptions.

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6. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 and on that basis denies those allegations.

7. Defendant admits the allegations in paragraph 7 of the complaint that the sale of the vehicle was accompanied by Defendant's implied warranty of merchantability pursuant to California Civil Code sections 1791.1 and 1792. Defendant denies that the duration of an implied warranty is coextensive with the duration of the applicable express written warranty.

8. Defendant admits that the allegations set forth in paragraph 8 state the definition of implied warranty of merchantability set forth in California Civil Code section 1791.1.

9. Defendant denies the allegations in paragraph 9 of plaintiff's complaint.

10. Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 of plaintiff's complaint and on that basis denies those allegations.

11. Defendant denies the allegation in paragraph 11 of plaintiff's complaint that defendant has failed to comply with its obligations under the implied warranty and that plaintiff has been damaged as a result of any conduct by this answering defendant as alleged in the first cause of action in plaintiff's complaint.

SECOND CLAIM FOR RELIEF

BREACH OF THE IMPLIED WARRANTY OF FITNESS

CALIFORNIA CIVIL CODE SECTION 1794

12. Defendant incorporates the responses to paragraphs 4 through 6 and paragraph 10 of plaintiff's complaint as though fully set forth herein.

13. Defendant denies the allegations in paragraph 13 of plaintiff's complaint.

14. Defendant admits that Paragraph 14 of plaintiff's complaint sets forth the definition of implied warranty of fitness set forth in Civil Code section 1792.1, but otherwise denies the allegations in paragraph 14 of plaintiff's complaint.

15. Defendant denies the allegations in paragraph 15 of plaintiff's complaint.

16. Defendant denies the allegation in paragraph 16 of plaintiff's complaint that defendant has failed to comply with its obligations under the implied warranty and that plaintiff has been damaged as a result of any conduct by this answering defendant as alleged in the second cause of action in plaintiff's complaint.

THIRD CLAIM FOR RELIEF

BREACH OF EXPRESS WARRANTY

CALIFORNIA CIVIL CODE SECTION 1794

17. Defendant incorporates the responses to paragraphs 4 through 6 and paragraph 10 of plaintiff's complaint as though fully set forth herein.

18. Defendant admits the allegation in paragraph 18 of plaintiff's complaint that plaintiff delivered the vehicle to the manufacturer's authorized service and repair facility within the state. Defendant lacks knowledge or information sufficient to admit or deny the allegation that each time the vehicle was delivered defendant and its representatives were notified of the characteristics of the alleged defects. Defendant denies the allegation that manufacturer's authorized service and repair

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facilities failed to repair the vehicle pursuant to the terms of the applicable limited express warranty.

19. Defendant denies the allegation in paragraph 19 of plaintiff's complaint that defendant failed to comply with its obligations under the express warranty and that plaintiff has been damaged as a result of any conduct by this answering defendant as alleged in the third cause of action in plaintiff's complaint.

20. Defendant denies the allegations in paragraph 20 of plaintiff's complaint.

FOURTH CLAIM FOR RELIEF

FAILURE TO PROMPTLY REPURCHASE PRODUCT

CALIFORNIA CIVIL CODE SECTION 1793.2(d)

21. Defendant incorporates the responses to paragraphs 4 through 6 of plaintiff's complaint as though fully set forth herein.

22. Defendant admits that it has not repurchased the vehicle but otherwise denies the allegations in paragraph 22 of plaintiff's complaint.

23. Defendant denies plaintiff's allegations in paragraph 23 of the complaint that defendant failed to comply with its obligations pursuant to California Civil Code sections 1793.2(d) and 1793.1(a)(2).

24. Defendant admits that Civil Code section 1793.2(d) existed at the time plaintiff purchased the vehicle but otherwise denies the allegations in paragraph 24 of plaintiff's complaint.

25. Defendant admits that it does not maintain a third-party dispute resolution mechanism as alleged in paragraph 25, but otherwise denies the allegations in paragraph 25 of plaintiff's complaint.

26. As to paragraph 26 of plaintiff's complaint, defendant denies that it has failed to comply with California Civil Code sections 1793.2(d) and/or 1793.1(a)(2) and that plaintiff is entitled to civil penalties pursuant to California Civil Code section 1794.

FIFTH CLAIM FOR RELIEF

FAILURE TO COMMENCE REPAIRS WITHIN A REASONABLE TIME

AND TO COMPLETE THEM WITHIN 30 DAYS

CALIFORNIA CIVIL CODE SECTION 1794

27. Defendant incorporates the responses to paragraphs 4 through 6 and paragraph 10 of plaintiff's complaint as though fully set forth herein.

28. Defendant denies the allegations in paragraph 28 of plaintiff's complaint.

29. Defendant denies the allegations in paragraph 29 of plaintiff's complaint that defendant has failed to comply with its obligations pursuant to California Civil Code section 1793.2(b) and that plaintiff has been damaged as alleged.

30. Defendant admits that Civil Code section 1793.2(d) existed at the time plaintiff purchased the vehicle but otherwise denies the allegations in paragraph 30 of plaintiff's complaint.

SIXTH CLAIM FOR RELIEF

CONVERSION

31. Defendant incorporates the responses to the Fourth Claim for Relief of plaintiff's complaint as though fully set forth herein.

32. Defendant denies plaintiff's allegations in paragraph 32 of the complaint, and further denies that plaintiff is entitled to state a cause of action for conversion against this answering defendant based on the facts and circumstances of this dispute. Defendant also

denies plaintiff's allegations that he is entitled to restitution pursuant to Civil Code section 1793.2(b).

33. Defendant denies plaintiff's allegations in paragraph 33 of the complaint and denies that it has wrongfully converted money for its own use.

34. Defendant denies plaintiff's allegations in paragraph 34 of the complaint that it has committed a conversion and that plaintiff has suffered damages as a result of the alleged conversion.

35. Defendant denies plaintiff's allegations in paragraph 35 of the complaint, and specifically denies that plaintiff is entitled to recover punitive damages. Defendant denies it falsely and intentionally misrepresented to plaintiff that it was not obligated to make restitution. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegation that plaintiff has little choice but to continue using the vehicle and on that basis denies this allegation. Defendant also denies the allegation that it intentionally refused to make restitution to plaintiff so it could argue that continued use was a reason to deny restitution.

Defendant alleges the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

(Comparative Fault)

36. If plaintiff sustained any damages as alleged in the complaint, that damage was proximately caused and contributed to by plaintiff in failing to conduct himself in a manner ordinarily expected of a reasonably prudent person in the conduct of his affairs and business. The contributory negligence and fault of plaintiff diminishes any recovery herein.

SECOND AFFIRMATIVE DEFENSE

(Contributory Negligence Of Third Parties)

37. If plaintiff sustained any damages as alleged in the complaint, that damage was proximately caused and contributed to by persons and/or parties other than this answering defendant in failure to conduct themselves in a manner ordinarily expected of reasonably prudent persons in the conduct of their affairs and business. Contributory negligence and fault of other persons and/or parties diminishes any recovery from this answering defendant.

THIRD AFFIRMATIVE DEFENSE

(Failure To State A Cause Of Action)

38. Plaintiff's complaint, and each cause of action and claim for relief thereof, fails to state sufficient facts to constitute a cause of action or claim for relief against this answering defendant.

FOURTH AFFIRMATIVE DEFENSE

(Disclaimer of Warranties)

39. Plaintiff's claim for relief for breach of express warranty and incidental and consequential damages is barred by the express disclaimers and limitations of liability contained in the alleged express warranties made by defendant.

FIFTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

40. Any claim for relief alleged in the complaint is barred by the statute of limitations contained in California Code of Civil Procedure, specifically sections 337 and 338 and/or California Uniform Commercial Code section 2725.

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SIXTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

41. If plaintiff sustained any damage as alleged in the complaint, that damage was proximately caused and contributed to by plaintiff in failing to mitigate damages. Plaintiff's failure to mitigate damages diminishes any recovery herein.

SEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

42. Defendant is informed and believes and based thereon alleges that the plaintiff has engaged in conduct and activity sufficient to estop him from asserting all or any part of the claim set forth in plaintiff's complaint.

EIGHTH AFFIRMATIVE DEFENSE

(Unclean Hands)

43. Defendant is informed and believes and based thereon alleges that the claims and relief sought by plaintiff are barred by reason of the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

(Waiver)

44. Defendant is informed and believes and based thereon alleges that plaintiff has engaged in conduct and activities sufficient to constitute a waiver of any alleged breach of contract, breach of warranty, negligence or any other conduct as set forth in the complaint.

TENTH AFFIRMATIVE DEFENSE

(Laches)

45. Defendant is informed and believes and based thereon alleges that the plaintiff waited an unreasonable period of time to

complain of the alleged acts or omissions at issue in the complaint so as to prejudice this answering defendant. Plaintiff is therefore guilty of laches and is barred from recovery.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure of Performance)

46. Defendant is informed and believes and thereon alleges that any failure to perform the obligations as described in the complaint resulted from plaintiff's failure to perform as required by the contract and/or warranty. Performance on plaintiff's part of his obligation was a condition precedent to the performance of defendant's obligations.

TWELFTH AFFIRMATIVE DEFENSE

(Alteration of Product)

47. Any damage to the subject automobile was caused and created by changes and alterations made to the vehicle, subsequent to the time of the vehicle's manufacture and/or sale by persons other than defendant or any of its agents, servants, or employees, thereby barring plaintiff's recovery herein.

THIRTEENTH AFFIRMATIVE DEFENSE

(Failure to State Cause of Action for Civil Penalties)

48. The complaint fails to state sufficient facts to warrant the imposition of civil penalties.

FOURTEENTH AFFIRMATIVE DEFENSE

(Civil Penalties)

49. Any claim for relief alleged in the complaint seeking civil penalties is barred by the statute of limitations contained in the California Code of Civil Procedure, specifically section 340, subdivisions (1) and (2).

FIFTEENTH AFFIRMATIVE DEFENSE

(Consent)

50. The repair process to plaintiff's vehicle was appropriate and proper and is believed to have been done with the plaintiff's consent.

SIXTEENTH AFFIRMATIVE DEFENSE

(Abuse or Failure to Maintain)

51. Plaintiff is barred from recovery by virtue of California Civil Code section 1794.3 since the claimed defect or nonconformity was caused by the unauthorized or unreasonable use of the vehicle following sale.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Statute of Limitations re Implied Warranty)

52. Each and every claim for relief based upon breach of implied warranty is barred by virtue of California Civil Code sections 1791.1(c), 1792, 1792.1 and 1792.2.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Failure to Provide Reasonable Opportunity to Repair)

53. Plaintiff is precluded from any recovery pursuant to California Civil Code section 1793.2(c) as plaintiff failed to allow a reasonable opportunity to repair.

NINETEENTH AFFIRMATIVE DEFENSE

(Compliance)

54. Defendant has complied with its obligations under the implied warranty and the limited express warranty.

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TWENTIETH AFFIRMATIVE DEFENSE

(Implied Warranty of Fitness)

55. Plaintiff's purchase of the vehicle was not accompanied by this answering defendant's implied warranty of fitness for plaintiff's particular purpose.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Waiver of Right to Restitution/Rescission-Type Damages)

56. Plaintiff has waived his right to seek restitution or rescission-type damages against this answering defendant as a matter of law, or, as an alternative, this answering defendant is entitled to an equitable setoff for use of the vehicle.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(No Privity)

57. There is no contractual privity between the plaintiff and this answering defendant therefore barring any claim for breach of implied warranty.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(No Revocation)

58. Plaintiff is not entitled to revocation/rescission-type damages because there is no privity between plaintiff and this answering defendant.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Failure to Properly Revoke Acceptance)

59. Plaintiff failed to properly revoke acceptance by either failing to notify within a reasonable amount of time and/or before substantially altering or changing the product.

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TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Failure to Provide Notice or Give Opportunity to Cure)

60. Plaintiff's complaint fails as a matter of law due to his failure to provide notice and give this answering defendant an opportunity to cure.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Unconstitutionality of Punitive Damages)

61. The imposition or recovery of punitive damages as sought in plaintiff's complaint violates the due process clause and other relevant provisions of the Constitutions of the United States and of the State of California.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Insufficient Facts for Punitive Damages)

62. Plaintiff's complaint fails to state facts sufficient to constitute the recovery of punitive damages against this answering defendant.

PRAYER FOR RELIEF

WHEREFORE, defendant prays as follows:

1. That plaintiff takes nothing by way of his complaint on file herein;

2. That judgment be entered in favor of defendant for costs of suit; and,

3. For such other and further relief as the Court may deem just and proper.

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JURY DEMAND

Defendant demands a jury trial on all claims for relief and matters raised herein as allowed by law.

Dated: May 9, 2008 GATES, O'DOHERTY, GONTER & GUY, LLP

By: s/Thomas A. Scutti
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